

ESTTA Tracking number: **ESTTA448730**

Filing date: **12/29/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052197
Party	Plaintiff Terri Yenko Gould, Executor
Correspondence Address	GEORGE E BULLWINKEL 425 WOODSIDE AVE HINSDALE, IL 60521 UNITED STATES geb@bullwinkel.com
Submission	Testimony For Plaintiff
Filer's Name	George E. Bullwinkel
Filer's e-mail	geb@bullwinkel.com
Signature	/George E. Bullwinkel/
Date	12/29/2011
Attachments	Latella (rebuttal).pdf (17 pages)(1041904 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Terri Yenko Gould, Executor,)
)
 Petitioner,)
)
 v.) Cancellation 92052197
)
SuperCar Collectibles, Limited,))

 Registrant,

PETITIONER'S NOTICE OF TESTIMONIAL DEPOSITION
(REBUTTAL)

DEPOSITION TRANSCRIPT OF:
JOHN W. LATELLA, ESQ.

DEPOSITION DATE:
December 20, 2011
Tuesday, 2:00 p.m.

PARTY TAKING DEPOSITION:
Petitioner

COUNSEL OF RECORD
FOR THIS PARTY:
George E. Bullwinkel, Esq.
425 Woodside Avenue
Hinsdale, Illinois 60521
630-418-2273

REPORTED BY:
Gina M. Christiana
Notary Public
Reference No. GC25099

1 DEPOSITION OF JOHN W. LATELLA, ESQ.,
2 a witness, called by the Petitioner for examination,
3 in accordance with the Illinois Rules of Civil
4 Procedure, taken by and before Gina M. Christiana, a
5 Court Reporter and Notary Public in and for the
6 Commonwealth of Pennsylvania, at the offices of.
7 John W. Latella, Esq., 400 Holiday Drive, Suite 102,
8 Pittsburgh, Pennsylvania, 15220, on Tuesday,
9 December 20, 2011, commencing at 2:00 p.m.

10 - - - -

11 APPEARANCES:

12 FOR THE PETITIONER:

13 George E. Bullwinkel, Esq. (Via telephone)
14 425 Woodside Avenue
15 Hinsdale, Illinois 60521
16 630-418-2273
17 geb@bullwinkle.com

18 FOR THE RESPONDENT:

19 Robert D. Buyan, Esq. (Via telephone)
20 STOUT, UXA, BUYAN & MULLINS, LLP
21 4 Venture, Suite 300
22 Irvine, CA 92618-7384
23 949-450-1750
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - - -

* I N D E X *

Direct Examination by Mr. Bullwinkel - - - - -	4
Cross-Examination by Mr. Buyan - - - - -	13
Certificate of Court Reporter - - - - -	16
Errata Sheet - - - - -	17

- - - -

* INDEX OF EXHIBITS *

(No Exhibits were marked.)

- - - -

1 JOHN W. LATELLA, ESQ.,
2 having been duly sworn,
3 was examined and testified as follows:

4 - - - -

5 DIRECT EXAMINATION

6 - - - -

7 BY MR. BULLWINKEL:

8 Q. John, would you tell us your name and your
9 office address, and what is your business or
10 occupation?

11 A. John W. Latella. My office address is 400
12 Holiday Drive, Suite 102, Pittsburgh,
13 Pennsylvania. The Zip is 15220, and I'm a
14 lawyer.

15 Q. When did you gain admission to the bar?

16 A. A long time ago.

17 Q. Okay. We will say a long time ago. Are you in
18 active practice?

19 A. I am, yes. I'm still practicing. Can't get it
20 right after all these years.

21 Q. Have you reviewed any documents having to do
22 with this matter, which is the matter of the
23 estate of Don Yenke to cancel certain trademark
24 registrations?

25 A. Well, the documents that you sent me -- you

1 sent me Don Yenke's will.

2 Q. John, did I send you Petitioner's Exhibits 1
3 through 4 and Respondent's Exhibits 95, 96 and
4 97?

5 A. How would I know?

6 Q. Well, they would be marked as such.

7 A. Let me tell you what I have. I have a document
8 that is marked Respondent's Exhibit 96, which
9 is the Supplemental Account. I have a document
10 marked Respondent's Exhibit No. 96, which is --
11 96 and 95. I don't see an exhibit on this --
12 oh, here it is, I have 97, which is the
13 Inheritance Tax Filing.

14 I have a grant of letters to Terry
15 Gould, formerly Terry Yenke, and doesn't seem
16 to have an exhibit number on it. I have a
17 short certificate for that grant of letters.

18 I have a document that has P-02 up on
19 the top of it, which is one page, Adjudication
20 -- Unsigned Adjudication and Decree, with a
21 Schedule of Distribution attached, and I have a
22 document that is marked P-01, which is Don
23 Yenke's will. Those are the documents that you
24 sent me.

25 Q. All right. Now, could you tell us who Donald

1 Frank Yenko was when you knew him?

2 A. That is who he was. I don't understand the
3 question. Don Yenko was a gentleman who owned
4 a couple of automobile agencies in Western
5 Pennsylvania. I knew him from doing some legal
6 work there, and he unfortunately got involved
7 in a coal deal, which is how I became familiar
8 with him, and he was a businessman.

9 He lived in Washington County, which
10 is a county immediately south of Allegheny
11 County, where I'm sitting now.

12 Q. And did he own a Chevrolet dealership and any
13 other automobile dealerships that you knew
14 about?

15 A. Well, you mean -- the answer is yes, but that
16 varies depending upon what point in time you
17 are talking about.

18 His father owned a Chevrolet
19 dealership, and I believe Don owned a part of
20 that with his dad. His dad's name was Frank
21 Yenko. Don owned a Honda dealership down in
22 Washington County. He owned a Honda dealership
23 in Steubenville, Ohio. He had another
24 dealership, too, and I think it was like a --
25 he had a Subaru dealership, and then he had

1 another one of those -- one of these cult car
2 things. I can't even remember the name of the
3 car.

4 Q. Did you draft Don Yenke's Last Will and
5 Testament that I have marked as Petitioner's
6 Exhibit 01?

7 A. I think so. It was drafted by either me or
8 someone from my office back then at my
9 direction. Frankly, I can't remember if I
10 drafted this or whether someone else did, but
11 it would have at least been at my direction.

12 Q. Did it come to your attention in 1987 that Don
13 died in the crash of his private aircraft?

14 A. Yes, it sure did. Everybody thought I was in
15 the plane.

16 Q. Fortunately you weren't.

17 A. Very fortunate.

18 Q. That will has been in probate in Washington
19 County, Pennsylvania?

20 A. It was.

21 Q. And who was responsible for representing the
22 estate in the following proceedings?

23 A. I was.

24 Q. Now, the first partial account, which I think
25 bears exhibit -- Respondent 95, there is a list

1 of a lot of assets. Do you see that on Exhibit
2 95?

3 A. Yes, Schedule D and Schedule F. Yes, it has
4 the schedules attached to it, yes.

5 Q. I've looked through that, and I didn't find any
6 mention of either the trademark registration
7 that belonged to Yenke Sports Cars or to Don's
8 rate of publicity or such as it was. Did that
9 indicate, to your knowledge, that those did not
10 exist or why aren't they mentioned?

11 A. Don Yenke's Sports Cars is listed on there as
12 an asset. So anything Yenke Sports Cars would
13 have owned I guess is there by inference.

14 Q. Other than that, were there other intangibles
15 that were noted by you in that partial account?

16 A. Is shares of stock in the company a tangible or
17 an intangible? Let me think about that.

18 - - - -

19 (There was a brief pause in the proceedings.)

20 - - - -

21 A. Other than the shares of stock in the company,
22 the answer is, no, there is nothing else noted.

23 BY MR. BULLWINKEL:

24 Q. Now, there was a Supplemental Account, and I
25 think that is Respondent's Exhibit 96. Did

1 that add anything of an intangible nature?

2 A. Did that add anything of a what kind of a
3 nature?

4 Q. An intangible, such as right of publicity or
5 trademark rights?

6 A. I don't think so. Let me look at it.

7 - - - -

8 (The witness reviewed the document.)

9 - - - -

10 A. No, nothing of that nature is listed.

11 BY MR. BULLWINKEL:

12 Q. Did the stock in Yenke Sports Cars that are
13 listed in the Supplemental Account have any
14 value? If you look at Page 3.

15 A. What was the question again? Did it have any
16 value?

17 Q. Yes.

18 A. I scheduled it as zero value.

19 Q. All right. Let's look at Pages 4 and 5. There
20 is a net value of Yenke Imports and Yenke
21 Sports Cars. Is that shown to have any value?

22 A. Both of them are listed as undetermined.

23 Q. Both of them being dissolved during that time?

24 A. Say again?

25 Q. Were both of them being dissolved at that time?

1 A. It notes with respect to Yenko Imports,
2 dissolution of this corporation in process, and
3 Imports, it's the same, but I guess at the time
4 of the Supplemental Account was held, we were
5 in the process of dissolving those two
6 companies.

7 Q. To your knowledge, did any other person or
8 entity carry on the automotive business of
9 Yenko Sports Cars under the Yenko name?

10 A. No one had authority to do that. So to my
11 knowledge, no, although somebody stole all of
12 the stuff out of the garage.

13 Q. What kind of stuff?

14 A. Whatever was there. Keep one thing in mind,
15 Yenko Sports Cars was not an active corporation
16 during the time of my watch with or over for
17 Don Yenko.

18 Q. And was it, to your knowledge, sold to anybody
19 to continue in the business?

20 A. No, it was not sold because members of the
21 family were upset that various sundry stuff had
22 ostensibly disappeared out of an old garage
23 building in Canonsburg, Pennsylvania, but I
24 don't know what it was. I have never been in
25 the garage. I have no personal knowledge of

1 any of that stuff.

2 Q. Who were the administrators or executrix of the
3 Donald Frank Yenko Estate from the time you
4 took over the matter of having it put through
5 probate?

6 A. Initially, I believe his mother, Martha Yenko
7 was the executrix, and at some point in time, I
8 can probably pin that down if I could find that
9 other document. Early April of 1989, Marty
10 Yenko resigned, and Don's Daughter, Terry Yenko
11 Gould, became the administratrix.

12 Q. To your knowledge, has anyone ever replaced
13 Terry Yenko Gould in that position?

14 A. No, she was there for the duration.

15 Q. When you closed your file in the matter, was
16 Terry continuing to be the administratrix of
17 the estate?

18 A. Well, let me put it this way, she was the last
19 administratrix of that estate. There was no
20 one else. She's the one that actually
21 petitioned the court for distribution.

22 MR. BULLWINKEL: I think my direct
23 examination is finished, but I will just tell
24 you that you can sign this, and I would like to
25 stipulate with counsel if you could sign it

1 before any notary, and I would be ordering a
2 single copy after counsel is done with his
3 cross-examination.

4 THE WITNESS: You said something to
5 the effect that I could sign something?

6 MR. BULLWINKEL: Well, I think you
7 need to sign this deposition after it's typed
8 up. I would like the stipulation that you can
9 do it before any notary, not just this
10 particular reporter.

11 THE WITNESS: Well, let me ask you a
12 question, when do you need it?

13 MR. BULLWINKEL: Oh, in the next
14 couple of weeks.

15 THE WITNESS: Well, that could be
16 problematic, unless the court reporter is going
17 to commit to having it to me before December
18 29th.

19 MR. BULLWINKEL: Oh, that is fine.

20 THE WITNESS: I said unless because
21 I'm out of the loop for a month after that.

22 MR. BULLWINKEL: Rob, do you have
23 something to add?

24 MR. BUYAN: I do.

25 - - - -

CROSS-EXAMINATION

- - - -

BY MR. BUYAN:

Q. I will be brief. Mr. Latella, do you recall when you established your attorney/client relationship with Don Yenke? If you don't recall a specific date, just an approximation.

A. That is what I'm trying to approximate it for you. He died in '86. I would say -- oh, somewhere between 1982 and 1984 is the best I can give you.

Q. Okay. So you had been his counsel for at least a couple or years prior to his death?

A. Yes. I don't know that I was his exclusive counsel or else I would not be talking to you right now because his other lawyer was on the airplane with him.

Q. And who was that other lawyer?

A. What was his first name? Gordon Harrington.

Q. Now, Mr. Latella, back at that time, was your practice limited to wills and estates or were you a generalist?

A. I would have to say back at that time wills and estates were a small portion of my practice. The majority of which was doing transactions

1 involving coal and gas and oil.

2 Q. So you did other transactional work for Don
3 Yenko and his companies; is that correct?

4 A. Now, what happened is a person that I knew from
5 the coal business brought Don Yenke to my
6 office because he needed a lawyer that knew
7 something about the coal business, and that is
8 how I met him.

9 Q. Okay.

10 A. I subsequently spent time unraveling a coal
11 deal that he was in and did some work for him
12 at his automobile agencies.

13 MR. BUYAN: All right. That is all I
14 have for you. Thank you for your time this
15 morning or this afternoon.

16 THE WITNESS: Very good.

17 MR. BULLWINKEL: Thank you for your
18 cooperation and your courtesy, and if the court
19 reporter will write that up and have
20 Mr. Latella sign it and send me the original,
21 preferably as a PDF also so that I can file it.

22 MR. BUYAN: I want to clarify the
23 stipulation that George stated in the
24 stipulation that the transcript could be signed
25 before any notary, I want to clarify whether he

1 is requiring the transcript to be notarized or
2 is it a declaration paragraph?

3 MR. BULLWINKEL: Oh, my don't we make
4 it easier. If you would accept a declaration
5 --

6 MR. BUYAN: Apparently he is going
7 to be leaving town, and I don't have an
8 objection to that as long as he signs an
9 adequate declaration paragraph, and I think
10 that will do away with the need for a notary.

11 MR. BULLWINKEL: Thanks. I will
12 e-mail you a declaration paragraph to use when
13 you get the transcript, and you can just
14 execute that and send it to me, and we will be
15 done.

16 - - - -

17 (The proceedings were concluded at 2:25 p.m.)

18 - - - -

19

20

21

22

23

24

25

1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE

2 COUNTY OF ALLEGHENY) SS:

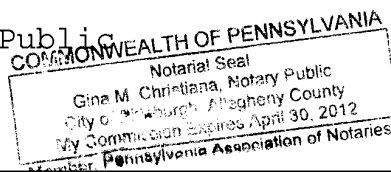
3 I, Gina M. Christiana, a Court Reporter and
4 Notary Public in and for the Commonwealth of
5 Pennsylvania, do hereby certify that the witness,
6 JOHN W. LATELLA, ESQ., was by me first duly sworn to
7 testify to the truth, the whole truth, and nothing
8 but the truth; that the foregoing deposition was
9 taken at the time and place stated herein; and that
10 the said deposition was recorded stenographically by
11 me and then reduced to printing under my direction,
12 and constitutes a true record of the testimony given
13 by said witness.

14 I further certify that I am not a relative or
15 employee of any of the parties, or a relative or
16 employee of either counsel, and that I am in no way
17 interested directly or indirectly in this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 and affixed my seal of office this 27th day of
20 December, 2011.

21
22 

23
24 Notary Public



DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both under 18 U.S.C. 1001, declares my testimony as transcribed on December 20, 2011 in the foregoing DEPOSITION OF JOHN W. LATELLA is true and correct.

Signed: John W. Latella
Date: 12/28/2011